Child Law Practice
Helping Lawyers Help Kids
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IN PRACTICE

Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys

by Vivek S. Sankaran

Samira's Case:
Seven-year-old Samira entered the District of Columbia foster care system after her mother allegedly used drugs in her presence. Immediately upon her removal, the child welfare agency placed her in an emergency shelter while family placements were being explored. Shortly thereafter, Samira's caseworker discovered the child's maternal aunt, who lived in a spacious townhouse at which Samira had spent summers and holidays, was interested in having Samira placed with her.

Samira was eager to leave the emergency shelter and live with her aunt. Everyone, including the judge, guardian *ad litem* (GAL) and agency caseworker, supported the move and wished it to occur immediately. Despite the consensus of these professionals, the placement could not occur because Samira's aunt lived in Maryland. Under the Interstate Compact on the Placement of Children ("ICPC" or "the Compact"),[1] a uniform law enacted in every state, before Samira could be moved, a home assessment needed to be conducted and the placement had to be approved by the agency in Maryland where Samira's aunt resided.[2] Until then, the Compact explicitly deprived the juvenile court judge authority to order the placement.[3]

Months passed and no home study had been completed. Samira's GAL consulted the Compact and was frustrated to learn it contained no deadlines for completing the home study and no mechanism to force the "receiving state"[4] to undertake the assessment. Finally, after three months, the caseworker was informed the Maryland child welfare agency had completed the study and denied the placement because of concerns over the aunt's close relationship with Samira's birth mother, a concern shared by none of those working closely on Samira's case.

Disappointed and dismayed, Samira's GAL and others in the case again looked to the Compact to specify their options, but this inquiry proved fruitless. The Compact states the sole authority to determine whether the placement can occur rests with the receiving state and absent that state's approval, no judicial review is permissible. Samira would remain in foster care indefinitely.

Legal advocates across the country confront hundreds of cases like Samira's each year. Many of those cases end with arms raised in frustration due to what appears to be a lack of options after the receiving state either fails to complete a home study or denies a placement. That frustration is understandable given the absence of language in the Compact outlining any process to compel states to complete home studies or to permit judicial review of placement denials.

Yet, as advocates, we must move beyond this initial state of paralysis and develop creative ways to vindicate the rights of our clients, whether they are children, parents or relatives. This article provides strategies to overcome barriers to permanency created by the ICPC.

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What's Inside:

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ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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CASE LAW UPDATE

Child Welfare Agency Immune From Liability for Child's Injuries

Ortega v. Sacramento County Dep't of Health & Human Servs., 2008 WL 852952 (Cal. Ct. App.).

An 11-year-old child was taken into protective custody after her father was arrested for his out-of-control behavior while on drugs. A child welfare agency caseworker investigated and returned the child to the father's home three days later. Four days after the child's return, the father attacked her and stabbed her with a knife in her heart and lungs. The child survived but suffered severe physical and emotional injuries. The father, was convicted of attempted murder and sentenced to prison for 20 years.

The child, through her legal guardian, sued the child welfare agency and two social workers who participated in the investigation. She claimed they failed to perform their mandatory duties relating to investigating the circumstances surrounding her placement in temporary custody and keeping her in protective custody to ensure her safety. She claimed if the agency had properly investigated the circumstances surrounding her removal, it would have not returned her to her father and she would never have suffered her injuries.

The father had a long history of criminal activity and drug use. A restraining order had previously been ordered against him prohibiting from having contact with his children. He had also physically abused the child in the past, which had resulted in a dependency finding and the child's removal in 1998; the child was returned a year later and the dependency proceedings were closed in 2000. The child claimed that if the agency had performed a proper investigation it would have uncovered these facts and would not have immediately returned her to the father's care.

The trial court granted defendants' motion for summary judgment on the ground that the child's complaint was barred by discretionary and prosecutorial immunity. The court acknowledged child's claims that the defendants' failed to perform mandatory duties while conducting their investigation. However, it found that child protection investigations are discretionary activities and are highly subjective and therefore the lawsuit was barred by discretionary acts immunity and prosecutorial immunity. The child appealed.

The California Court of Appeals affirmed. The child claimed discretionary acts immunity did not apply because (1) defendants failed to discharge their mandatory statutory duties; (2) the child welfare agency had established protocols for conducting 48-hour investigations that rendered the investigation ministerial; and (3) even if defendants' were entitled to immunity, their failure to make a "considered decision" under the facts of the case meant that discretionary acts immunity did not apply.

The appellate court found the statute and regulations governing the agency's investigation outlined specific duties but also gave the agency considerable discretion. The court found defendants complied with these duties by conducting an investigation and making a decision about the potential risk to the child. Although the investigation was "lousy" and the decision was "wrong," they were still protected by discretionary immunity.

The child claimed that the social workers had to follow specific protocols outlined in the agency's handbook when conducting 48-hour investigations, such as reviewing the protective

custody report, conducting record checks for the child and parent, and gathering information. Because the handbook outlined specific duties to be performed during the investigation, the child claimed their activities were not discretionary. The appellate court disagreed, finding that although the agency handbook required certain actions it still gave the social workers discretion to make decisions and did not specify specific outcomes.

The court also disagreed with the child's third claim that discretionary immunity did not apply because the defendants failed to make a considered judgment when deciding how to conduct their investigation. The record showed the caseworker made a considered judgment by balancing the risks and advantages of retuning the child. Although her decision was based on inadequate information it was still a considered judgment. The social worker's alleged failure to gather relevant facts did not render her investigation ministerial, since collecting and analyzing information is an integral part of the "exercise of discretion" that is protected by immunity,

Since the court concluded that discretionary acts immunity applied it did not address the child's claims relating to prosecutorial immunity.

Child Entitled to Independent Counsel in Termination Proceedings

In re A.T., 2007 WL 4553343 (Iowa Ct. App.).

A mother's parental rights to two children were terminated. On appeal, the mother claimed the children's lawyer, who served as both their guardian ad litem (GAL) and lawyer, could not represent one child because of a conflict. The mother's 12-year-old daughter did not want her mother's rights terminated, contrary to the lawyer's advocacy supporting termination. The mother claimed separate counsel should have been appointed for her daughter because of this conflict.

The trial court at the termination hearing had waived the mother's motion asking that her daughter have separate counsel. The court overruled the motion, finding the daughter had waived the conflict. The court held that a conflict did not prevent an attorney from serving in both roles as long as the attorney presented the child's wishes to the court and, as GAL, also presented her best interests.

The Iowa Court of Appeals reversed, finding a conflict did exist and a separate attorney was required to represent the 12-year-old daughter's expressed interests.

The lawyer who represented the daughter at trial acknowledged the child had always stated her desire to return to her mother. He said he was careful to disclose the conflict between his role as lawyer advocating for her wishes and his role ad GAL advocating for her best interests. He said he explained the conflict to his client and she said she did not want a separate lawyer.

Iowa statute permits the appointment of a separate lawyer and separate GAL for a child when one person is unable to represent the child's legal interests and the child's best interests. In determining if the trial court improperly allowed the lawyer in this case to represent the daughter in both roles, the court considered if his duty as a GAL was consistent with his duty as a lawyer to follow his client's decisions and objectives.

The court noted that since the daughter was not of legal age, the attorney's responsibility to her was the same as that due a client with diminished capacity. When a client has diminished capacity, the attorney must take steps to protect the client, such as seeking appointment of a GAL in appropriate cases. The court emphasized that performing both roles complicates role definition and confidentiality issues, and advocating both positions is discouraged by American Bar Association standards of practice.

The court explained that age, maturity, and intelligence affect how much impact the child's wishes have and whether those wishes should be represented independently by an attorney. The court noted that the daughter voiced her desire not to have her mother's rights terminated. She attended the termination hearing and testified about her mother's progress in drug treatment, her love for her mother, her belief that her mother could resume parenting, and her desire to live with her mother after the school year. She desired reunification and believed her mother would succeed and be able to continue parenting her and her sister.

The appellate court found the daughter was mature enough to have her interests represented and that she should have been appointed a separate lawyer. Although the daughter's lawyer was experienced and capable, his advocacy supported termination of the mother's rights. Therefore, while acting in his GAL role, he recommended a disposition that conflicted with the daughter's expressed wishes. Since the daughter was old enough and mature enough to make an informed decision about the termination of her mother's rights, she was entitled to independent counsel to represent those wishes.

The court stressed that its holding did not mean that a lawyer must always be appointed for a child in termination proceedings. In some cases, a GAL can serve both the GAL and lawyer roles. It is when a GAL recommends a disposition that conflicts with the child's wishes, and the child is of sufficient age and maturity to make informed decisions about termination of parental rights, that the court may appoint independent counsel for the child.

STATE CASES

Alaska

Barile v. Barile, 2008 WL 819345 (Alaska). CUSTODY, CHANGED CIRCUMSTANCES
Trial court improperly dismissed mother's motion to modify custody without a hearing; allegations that father used excessive corporal punishment, drove child without a license, and parties remarried, made prima facie case of changed circumstances when taken as a whole.

Arizona

Antonio P. v. Ariz. Dep't of Econ. Sec., 2008 WL 859246 (Ariz. Ct. App.). DEPENDENCY, PLACEMENT PREFERENCES
Where dependent child had an extended relationship with aunt and uncle, trial court properly placed her with them over grandparents; while statutory preference requires consideration of grandparental relationship in best interest analysis, it does not mandate placement with grandparents.

California

In re M.F., 74 Cal. Rptr. 3d 383 (Ct. App. 2008). DEPENDENCY, REPRESENTATION
Where 14-year-old mother suffered abuse and was removed with her infant child, trial court erred in failing to appoint a guardian ad litem for the mother at the onset of proceedings; as a minor, mother was not fully able to participate in proceedings to protect rights to her child.

In re William K., 73 Cal. Rptr. 3d 737 (Ct. App. 2008). DEPENDENCY, PATERNITY
Trial court did not err in approving reunification plan for mother and her fiancée who filed an acknowledgement of paternity over objection of birth father; birth father failed to timely assert paternity or take other steps to show his commitment to child sufficient for due process purposes.

Connecticut

In re Anthony A., 942 A.2d 465 (Conn. Ct. App. 2008). DEPENDENCY, NEGLECT
Evidence showing both parents were institutionalized and were unable to properly care for child, no person had legal authority to care for child, and mother's psychiatric state was unlikely to stabilize within 90 days supported finding that child was neglected on day neglect petition was filed on ground that child was living under conditions that threatened her well-being, even though child was in care of grandparents and had not been harmed.

In re Jorden R., 2008 WL 961133 (Conn. Ct. App.). TERMINATION OF PARENTAL RIGHTS, EXPERT WITNESSES
Although mother's therapist testified at termination trial about mother's mental condition, trial court erred by excluding testimony and report by mother's retained psychologist who supported reunification efforts and believed mother could benefit from them; psychologist's testimony could have played important role in deciding if agency properly found it unnecessary to continue providing reasonable efforts to reunify mother and child.

Florida

D.O. v. S.M., 2007 WL 4409708 (Fla. Dist. Ct. App.). TERMINATON OF PARENTAL RIGHTS, MEDICAL EVIDENCE
Mother's parental rights to infant were properly terminated on ground that the mother either inflicted or failed to protect child from serious physical injury; child had multiple bone fractures and internal bleeding consistent with shaking, had been exclusively in the care of the parents, and mother could not explain the source of the injuries.

G.S. v. T.B., 969 So. 2d 1049 (Fla. Dist. Ct. App. 2007). ADOPTION, BEST INTERESTS
Trial court properly denied maternal grandparents' petition to adopt while granting them custody with visitation to paternal grandparents because extensive testimony indicated children's best interests would be better fulfilled by a continued legal relationship with both sets of grandparents.

M.H. v. Dep't of Children and Family Servs., 2008 WL 818802 (Fla. Dist. Ct. App.). FOSTER CARE, LICENSING
Child welfare agency could not deny foster parents' application to renew foster care license based on child abuse since agency failed to prove by preponderance of evidence that foster parents intentionally abused child; child's fracture to left elbow while in foster parents' care was not significant injury and was unrelated to abuse.

Iowa

In re A.P., 2008 WL 782814 (Iowa App. Ct.). TERMINATION OF PARENTAL RIGHTS, PARENT-CHILD RELATIONSHIP
Mother failed to successfully show that termination of her parental rights was not in child's best interests since she shared a close relationship with child and child was in legal custody of a relative; although state statute provides that termination is not required when child is in legal custody of relative and there is clear and convincing evidence of a close parent-child relationship, any bond the mother shared with child was outweighed by risk of harm posed by her continuing substance abuse and parental conflict with father.

Kentucky

Cabinet for Health & Family Servs. v. C.M., 2008 WL 682606 (Ky. Ct. App.). DEPENDENCY, EDUCATION
Trial court had authority to reinstate custodial services over objection of state welfare agency where services were extended beyond age 18 for dependent child who pursued college education, dropped out, and later sought to re-enroll.

Maine

In re Natasha S., 943 A.2d 602 (Me. 2008). DEPENDENCY, HOME STUDY
Home study report created under Interstate Compact on Placement of Children should not have been admitted for reasons unrelated to ICPC compliance, therefore trial court should not have used home study to decide parental fitness and best interests of child; trial court's reliance on inadmissible home study evidence was not harmless and required remand.

Mississippi

In re Hines, 2008 WL 975047 (Miss.). DEPENDENCY, NOTICE
In child protection proceedings, failure to notify non-party in writing that was required to appear in court violated due process and telephone notice that was provided was insufficient to form basis for contempt order.

In re N.W., 2008 WL 885810 (Miss.). ABUSE, NOTICE
Failure to notify father of adjudicatory hearing on abuse allegations and hearings affecting child's custody violated statutory notice requirements and was reversible error.

Missouri

In re E.F.B.D., 245 S.W.3d 316 (Mo. Ct. App. 2008). TERMINATON OF PARENTAL RIGHTS, ABANDONMENT
Father's parental rights were properly terminated based on abandonment because father was able to contact and support child but did not; father had been with same employer for five years, did not provide insurance though he had coverage, owed over $17,000 in back child support, and had not visited for over six years prior to child's removal.

In re K.R.G., 2008 WL 798391 (Mo. Ct. App.). TERMINATION OF PARENTAL RIGHTS, SEXUAL ABUSE
Evidence supported finding that father, who had previously been found to have sexually abused children, was unfit at termination hearing; termination was within 14 months of initial sexual abuse finding, additional services were unlikely to result in parental adjustment or reunification, and father failed to receive counseling or treatment and showed no effort to reform behavior.

Nebraska

In re Walter W., 744 N.W.2d 55 (Neb. 2008). TERMINATION OF PARENTAL RIGHTS, RISK OF HARM
Psychologist's testimony that mother suffered from ongoing depression, displayed narcissistic traits, had an intermittent explosive disorder, and would be unlikely to provide permanency for child in future established beyond reasonable doubt that returning child to mother would pose serious emotional risk of harm.

Pennsylvania

In re K.Z.S., 2008 WL 902717 (Pa. Super. Ct.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO PROGRESS
Involuntary termination of mother's parental rights was supported by evidence showing mother failed to make any efforts to comply with her case plan goals; mother failed to receive outpatient services, complete parenting classes, or find and secure suitable housing and efforts she did make did not begin until involuntary termination petition was filed.

Texas

In re J.C., 2008 WL 704365 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION
Since mother's parental rights were terminated in a private lawsuit initiated by foster parents, mother lacked a mandatory statutory right to appointed counsel; no statutory right to appointed counsel exists in private termination suits.

In re J.O.A., 2008 WL 495324 (Tex. App.). TERMINATON OF PARENTAL RIGHTS, REPRESENTATION
Statute requiring father's appointed counsel to file a list of grounds for appeal after termination of parental rights was unconstitutional as applied where one of the grounds on appeal was ineffective assistance of counsel.

In re M.C.T., 2008 WL 624061 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, ENDANGERMENT
Evidence showed mother regularly left 12-year-old son alone with siblings who physically abused him, she lacked control over son and siblings, and several witnesses believed leaving son in mother's home would be harmful to son established that mother knowingly endangered son's physical and emotional well-being and supported terminating her parental rights.

Wisconsin

In re Amanda R., 2008 WL 878524 (Wis. Ct. App.). TERMINATION OF PARENTAL RIGHTS, CONSENT
Father's consent to termination of his parental rights was informed and voluntary where social worker reviewed termination questionnaire with father and thoroughly discussed its contents, and judge at termination hearing asked father about his understanding of the proceedings and his communications with the social worker, and verified that father understood the alternatives to termination.

FEDERAL CASES

M.D. Pa.

Todd v. Luzerne County Children & Youth Servs., 2008 WL 859253 (M.D. Pa.). DEPENDENCY, FOSTER CARE PAYMENTS
In dependency case, relative caretaker's substantive due process rights were not violated when child welfare agency denied foster care board payments where agency did not approve her as a foster parent when she failed to complete application process; there is no fundamental right to foster care board payments.

First Circuit

Kufner v. Kufner, 2008 WL 615506 (1st Cir.). CUSTODY, INTERNATIONAL CHILD ABDUCTION
Mother's removal of children from Germany to Rhode Island to seek medical treatment for them was wrongful under Hague Convention on Civil Aspects of International Child Abduction; children's habitual residence was Germany and father had custodial rights under German law and right to pursue custody of them; children's need for medical care was irrelevant when determining if removal was wrongful since analysis focuses on whether removal is consistent with custody rights established in country of habitual residence.

Sixth Circuit

Smith v. Williams-Ash, 2008 WL 782453 (6th Cir.). LIABILITY, CASEWORKERS
Parents' rights to due process were not violated when children were removed from unsafe living conditions without a hearing pursuant to a voluntary safety plan; although parents may have felt pressured to sign the plan, a caseworker's threat to pursue lawful actions, such as involuntary removal, is a permissible method to force a legal settlement.

Eighth Circuit

Seymour v. City of Des Moines, 2008 WL 763014 (8th Cir.). LIABILITY, LAW ENFORCEMENT
Although detaining father who was with his child when he stopped breathing was unreasonable because there was no evidence of criminal activity, officers were immune from liability under federal law because they could have reasonably mistaken their authority based on policy of investigating all child deaths and under Iowa law that provided immunity for official emergency responses.

Tenth Circuit

Robbins v. Oklahoma, 2008 WL 747132 (10th Cir.). LIABILITY, CHILD WELFARE AGENCIES
In parents' Section 1983 action following fatal injuries infant suffered at day care center, child welfare agency director and social workers were not liable based on their failure to ensure infant was in safe day care environment or their role in providing list of licensed day care providers to parents; parents still had legal custody of infant and made independent choice when selecting day care center for infant.

(Continued from front page)

Does the ICPC Apply?

When facing a potential interstate move of a child in foster care, the advocate must first determine whether compliance with the ICPC is required. The ICPC governs the interstate placement of "any child for placement in foster care or as a preliminary to a possible adoption."[5]

The model regulations of the Compact, which have not been adopted by most jurisdictions and thus are not binding, broadly define "foster care" to include care "by a relative of the child, by a non-related individual, or . . . by the child's parent(s) by reason of a court-ordered placement."[6] Courts have been reluctant to defer to the broad language in the nonbinding regulation and have independently examined the issue. Ultimately, most, but not all, courts have determined the Compact governs the interstate placement of children with relatives,[7] whereas courts are split on whether compliance is required when the potential placement is with a birth parent.[8] The ambiguity in the case law presents an opportunity for advocates to argue that the Compact does not apply, particularly if the placement were with a parent. Advocates must also remember that the Compact only applies to "placements" and thus visits between a child and an out-of-state relative or parent is not encompassed by the statute.[9]

If the advocate decides to argue that the Compact does not apply in a case, then he or she, in addition to constructing a legal argument justifying that conclusion, must also provide the court sufficient reassurances that the placement will be in the child's best interest. Testimony from the proposed caregiver, along with evidence demonstrating his or her suitability (e.g., proof of employment, information regarding care of other children, pictures of where the child would reside, and criminal or child protection history), may provide the court with enough information to determine that the placement serves the child's interests. Additionally, the advocate may have to show the court how the child would be monitored if the proposed placement were made and how the child would receive services, if necessary. Some courts have suggested that private child welfare agencies in the caregiver's state could perform these functions if the local public agency is unwilling.[10] Considering the current problems in administering the Compact, advocates should examine whether arguments that the Compact does not apply to a case are warranted.

Get the Home Study Done

Is it a priority placement?

If the court determines that compliance with the ICPC is necessary, then the focus of the advocacy shifts to ensuring a home study is completed promptly. The advocate should first determine whether the placement can be considered a "priority placement" under ICPC Model Regulation No. 7, which child welfare agencies and courts appear to follow even though it is not binding.

Under this regulation, a placement is considered a priority if:

- the proposed placement recipient is a relative; *and*
- the child is either under two years of age, resides in an emergency shelter *or* has spent a substantial amount of time in the home of the proposed placement recipient.

Additionally, if a completed home study request has been pending in the receiving state for over 30 days without a decision, then a priority request can be ordered. If either of these criteria can be met, the attorney should immediately file a motion requesting that the court order a priority placement request. In that order, the court must specify the factual findings justifying the priority placement and detail what must occur as a result of the designation of the home study as a priority.

Model Regulation No. 7 spells out the specific steps that must be followed once such an order is issued. In short, the regulation requires the sending state to provide the receiving state with the completed home study request within five business days and the home study must be completed within 20 business days thereafter. Clarity in the court order of what must occur may help speed the process.

Submit the home study paperwork

Regardless of whether the court orders a priority placement request, once the request for the ICPC home study is made, the next step is to ensure the sending state agency transmits the correct paperwork promptly. Advocates should work with the caseworker assigned to their client's case along with the state ICPC office to determine whether all necessary documentation has been obtained and transmitted to the receiving state. If, for some reason, there are unnecessary delays in the transmission of the paperwork, the attorney should consider filing a motion with the juvenile court seeking an order that the sending state submit the request immediately. Failure to comply with such an order can be enforced through the contempt powers of the court.

If the court determines that compliance with the ICPC is necessary, then the focus of the advocacy shifts to ensuring a home study is completed promptly.

Contact receiving state administrators

Once the paperwork requesting the home study is transmitted to the receiving state, then the advocacy strategy becomes more complicated

since the juvenile court has no jurisdiction over the child welfare agency in the receiving state. Thus, the advocate should focus on informal advocacy with the administrators in the receiving state responsible for conducting the home study. Each state child welfare agency has an ICPC office and has an individual designated as the compact administrator.[11] That office should be able to provide you with information about the caseworker assigned to conduct the home study in the local office, who you should plan to contact as well.

Contact the receiving state's home study caseworker

Contacting the caseworker responsible for conducting the home study will humanize the client and remind the worker of the importance of conducting the study in a timely manner. Often, the worker performing the assessment will not have met the child and her only contact with the case will be paperwork from the sending state. He or she may not know the urgency of the situation. The advocate can bring these facts and stories to the worker's attention and can also provide information to ensure the study is completed quickly. The advocate should also work with the proposed caregiver to collect all necessary information, which may include proof of income, copies of the lease, and health certificates. Checklists of what is required by the home study worker to complete her assessment may be available. Missing information and incomplete paperwork is a leading cause for delay under the ICPC.

Address delays

If unnecessary delay in the home study process is occurring, which is common, the advocate should contact the ICPC compact administrator in the sending state to follow up with his or her counterpart in the receiving state to identify the causes for delay. Additionally, the attorney should request that the court order the sending state compact administrator to file monthly reports detailing the status of the home study's completion and convene frequent hearings while the process is being completed. The ICPC model regulations also suggest that the judge in the sending state request assistance from a judge in the receiving state when the home study is being delayed,[12] although in practice, it is unclear what type of "assistance" is available since no cause of action or enforcement mechanism exists to force a state to complete the home study.

Because the Compact omits a specific time period for completing the home study and enforcement mechanisms, traditional litigation strategies may not be effective in expediting the process. Instead, the advocate should pursue the informal strategies described above. Additionally, recent federal legislation requires states, in order to receive federal child welfare funding, to complete interstate home studies within 60 days, absent extenuating circumstances.[13] States will also receive a bonus for completing studies within 30 days.[14] Although it is uncertain (and probably unlikely) that these federal provisions create an individual right that can be enforced through litigation, the threat of losing federal funds will hopefully create an incentive for states to comply with the provision.

Contacting the caseworker responsible for conducting the home study will humanize the client and remind the worker of the importance of conducting the study in a timely manner.

Challenge Placement Denials

Once the home study is done, the next challenge advocates regularly face is the denial of consent for the placement by the receiving state. The ICPC states that the placement cannot take place without the consent of the receiving state and courts lack authority to order the interstate placement absent this consent. Additionally, most states do not have any administrative processes to review ICPC denials.

The absence of due process is exacerbated by the seemingly unlimited discretion the receiving state has to determine whether to approve the placement. The Compact requires the receiving state to determine whether the proposed placement "does not appear to be contrary to the interests of the child"[15] but does not define that standard. Thus, many subjective factors, such as a caretaker's dated criminal history, health condition, living space, or lack of cooperation with the home study worker, have been used to deny placements. Again, under the Compact, once the receiving state makes this decision, no explicit judicial remedy is available.

Advocates faced with a placement denial must be creative in their strategies and be prepared to use advocacy techniques.

Address the issues underlying the denial

First, they should work with the ICPC offices in both states to see whether the issues that led to the denial can be addressed. For example, if the proposed caretaker's house was too small, perhaps the juvenile court could order the sending state agency to help the caretaker find a bigger place. If the caretaker has prior child protective history, the advocate can work with the caretaker to see whether the findings can be expunged. Often, the decisions denying placements are made by the receiving state with very limited information and providing more information about the placement to the home study worker may address any concerns. Key to this process is having an open, cooperative dialogue with those in the receiving state responsible for making this decision.

Explore administrative remedies
Next, the advocate should explore whether any administrative processes exist in the receiving state. If so, inform the caretaker how to navigate that process or locate counsel to represent him or her. For example, Massachusetts law permits "any person aggrieved by any action or inaction of the Department involving the placement of children across state lines" to have a fair hearing on the matter.[16] Similar statutes may exist elsewhere. Even if state law in a jurisdiction does not explicitly provide this right, advocates should look at their state administrative procedures acts to determine whether an argument can be made that the acts encompass agency denials of home studies under the ICPC.

Request a placement hearing
Consider filing a motion with the dependency judge requesting a placement hearing to determine whether the child's best interest will be served by the placement. Although the ICPC explicitly bars judicial review of placement decisions, advocates could argue the entire framework violates the constitutional rights of children and parents by depriving them of protected liberty interests without any opportunity to be heard.

Courts have repeatedly held that once children are placed in foster care, the state has a heightened obligation under the Fourteenth Amendment to protect them from physical and emotional harm which includes the responsibility to maintain familial relationships absent compelling circumstances.[17] Certainly, forcing children to remain in temporary placements for months if not years while a home study is completed and then denying the placement without any opportunity to contest the decision implicates their liberty interests.

When the proposed placement is with a birth parent, additional constitutional interests arise since the parent, too, has a protected interest in maintaining his or her relationship with the child.[18] The ICPC, however, by divesting children and parents of the right to a hearing, fails to recognize these basic constitutional rights. To preserve the constitutionality of the statute, advocates could argue that courts must afford a hearing to those aggrieved by negative decisions and must have the authority after such a hearing to order the placement if it furthers the child's best interest.

Advocates need not lose hope when confronted with a negative home study.

Help the caregiver file for custody/guardianship
In cases where evidence clearly shows the caretaker is a suitable long-term placement for the child, counsel could also encourage and assist the proposed caretaker to file for guardianship or custody of the child in either the receiving or sending state. Since the Compact only covers placements of children "in foster care or as preliminary to a possible adoption," advocates could argue that placements made in guardianship or custody proceedings are not covered by the Compact. Therefore, the court, in those collateral proceedings, arguably has authority to grant the petition despite the negative home study. This option could be pursued in lieu of a pursuing a placement via the Compact. This argument may be more successful if the juvenile court judge is willing to dismiss the child protective case immediately upon the granting of the custody or guardianship petition.

If the custody or guardianship court determines the ICPC does apply to these proceedings, the attorney can still argue that the framework is unconstitutional and that a best interests hearing is required based on the arguments above. The common thread of all of these potential arguments is that the Constitution, as a matter of due process, requires that children and parents be given the right to a placement hearing before the state can infringe upon their liberty interests.

Advocates need not lose hope when confronted with a negative home study. Through persistence and cooperation, state officials often reconsider their decisions, especially when presented with new evidence. The arguments described above protect basic due process rights of children and parents and are grounded in fundamental constitutional principles supported by case law. Advocates need only the courage to challenge a system that for 40 years, despite good intentions, has deprived their clients of basic procedural rights.

Seek Reform

Advocates looking to vindicate the rights of their clients can also work to reform the ICPC.

Contact your legislator
Discussions are occurring to revise the Compact. Recently the American Public Human Services Association (APHSA) issued a reform proposal which it has been lobbying state legislatures to enact.[19] Significant disagreement exists among child advocacy organizations about the merits of the proposal.

The National Council of Juvenile and Family Court Judges and the American Academy of Adoption Attorneys have endorsed the reforms while the National Association of Counsel for Children along with a consortium of state child advocacy organizations and attorneys have opposed them. Those objecting to the proposal are concerned that the proposal does not contain any specific timeframes for completing home studies, any enforcement mechanism when a state ignores the Compact, or any due process rights for families.[20]

Advocates can learn more about the proposed Compact at **http://icpc.aphsa.org/Home** and should voice any opinions about the proposal

to the APHSA and their state legislators. Time is of the essence.

Inform CIP coordinators

Additionally, the federal government has requested that each state, through its Court Improvement Program, assess the effectiveness of its interstate placement process and issue reports by June 2008. Advocates should report their experiences with the ICPC to their state CIP coordinators, whose names can be found on the website of the ABA Center on Children and the Law.[21]

Only through sustained advocacy, both on a case-specific and policy level, will the interstate placement system change to better address the need for children to be placed with their families in a timely and safe manner.

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Endnotes

[1] The Compact, the model regulations, and other relevant information are available on the website of the Association of Administrators of the Interstate Compact on the Placement of Children at http://icpc.aphsa.org

[2] Article III(d) of the ICPC states a "child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child."

[3] Ibid.

[4] The "receiving state" refers to the state in which the proposed caregiver resides. Article II(c)

[5] Article III(a) ("No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption.").

[6] Model Regulation No. 3 (5).

[7] See, e.g., In re Petition of T.M.J., 2005 D.C. App. LEXIS 381 (D.C. 2005); In the Matter of Ryan R., 2006 N.Y. App. Div. LEXIS 6494 (N.Y. Sup. Ct. 2006) (both finding that the ICPC applies to placements with parents). But see Arkansas Dep't of Health and Human Services v. Jessica Jones, 2007 Ark. App. LEXIS 46 (Ark. Ct. App. 2007); N.J. Div. of Youth & Family Services v. K.F., 803 A.2d 721 (N.J. Super. Ct. App. Div. 2002) (both finding that the ICPC does not cover placements with relatives). A complete list of cases interpreting the ICPC is on file with the author.

[8] See, e.g., Green v. Div. of Family Services, 864 A.2d 921 (Del. 2004); C.K. v. Dep't of Children and Families, 2007 Fla. App. LEXIS 2729 (Fla. Ct. App. 2007); Ariz. Dep't of Econ. Sec. v. Leonardo, 22 P.3d 513 (Ariz. Ct. App. 1999) (finding that the ICPC covers placements of children with their out-of-state birth parents). But see, McComb v. Wambaugh, 934 F.2d 474 (3d Cir. 1991); Ark. Dep't of Human Servs. v. Huff, 65 S.W.3d 880 (Ark. 2002); In re John M., 2006 Cal. App. LEXIS 1257 (Cal. Ct. App. 2006) (finding that placements with birth parents are outside the scope of the ICPC). More information about the application of the ICPC to birth parents can be found in Vivek S. Sankaran. "Out of State and Out of Luck: The Treatment of Non-Custodial Parents Under the Interstate Compact on the Placement of Children." *Yale Law and Policy Review* 25, 2006, 63.

[9] Model Regulation No. 9 explicitly states that "[a] visit is not a placement within the meaning of the Interstate Compact on the Placement of Children." The regulation, however, presumes that a visit longer than 30 days is a placement unless certain factors are met. Note that most jurisdictions have not adopted the model regulations of the ICPC.

[10] See, e.g., In re Johnny S., 40 Cal. App. 4th 969, 979 (Ct. App. 1995) ("If DFCS determines that monitoring by an agency in Texas is needed, it may choose to enter into an agreement for such services.").

[11] A list of state ICPC offices and names of Compact Administrators can be found at http://icpc.aphsa.org/Home/states.asp

[12] See Model Regulation No. 7 (5)(a).

[13] 42 U.S.C. § 671(a)(26)(A)(1).

[14] 42 U.S.C. § 673(d)(1); 42 U.S.C. § 73(g)(3).

[15] Article III(d).

[16] 110 Mass. Code Regs. 7.523.

[17] See, e.g., Marisol A. v. Giuliani, 929 F. Supp. 662, 677 (S.D.N.Y. 1996) (finding that the Fourteenth Amendment obligates the state to protect foster children's associational rights with their family).

[18] The right of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court. Troxel v Granville, 530 U.S. 57, 65 (2000). "[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." Michael H. v Gerald D, 491 U.S. 110, 123-124 (1989). Numerous Supreme Court decisions have reaffirmed the importance of this right.

[19] Reforms were issued in 2006 and more recently in 2008. For more information about the reforms, please visit: http://icpc.aphsa.org.

[20] More information about this author's views on the proposed reforms to the Compact can be found in Vivek S. Sankaran. "Perpetuating the Impermanence of Foster Children: A Critical Analysis of Efforts to Reform the Interstate Compact on the Placement of Children." *Family Law Quarterly* 40, 2006, 435.

[21] This information can be found at www.abanet.org/child/cipcatalog/cipcontactlist.html

Tapping The Inner Circle—Supporting Youth in Transition

A teen you're working with is about to age out of foster care.

- Do you know who's in his *inner circle?*
- Who will he turn to for advice when things get tough?
- Does he have friends who have also been in foster care?
- Will he have contact with siblings?

Personal relationships provide support for older youth who are aging out of foster care and entering young adulthood. Their *inner circle*—those people to whom they feel closest — offers a safety net. These connections also promote positive mental health and well-being during major life changes.

A new study by the Chapin Hall Center for Children explores social support networks among former foster youth. It uncovers how these youth perceive their relationships with others, the level of importance they assign them, and the nature of those relationships they find supportive. It looks at relationships through a foster care framework, examining connections before and after foster care with biological family and non-family members.

The researchers interviewed 29 young people who participated in Opportunity Passport, an independent living program provided through the Jim Casey Youth Opportunities Initiative. The youth had all exited care when they were interviewed and ranged in age from 17 – 26 years old. All had been in several placements while in care. Most were single, four were married, and 11 had children.

Each young person was asked to diagram their personal relationships, placing people in their lives in one of three groups:

- Inner circle—"Those people to whom you feel so close that it is hard to imagine life without them."
- Middle circle—"People to whom you may not feel quite that close but who are still important to you."
- Outer circle—"People whom you haven't already mentioned, but who are close enough and important enough in your life that they should be placed in your personal network."

These diagrams were then used as the basis for in-depth interviews. The researchers asked more about each person in the young person's network, the level of emotional connection to them, how long the relationship was expected to last, who wasn't included and why, and the kinds of relationships that were missing and why they might be important. The researchers also asked about the young person's understanding of permanency and what suggestions they had for improving child welfare system supports around relationship building.

Key Findings

Several themes emerged from the interviews with the young adults. These include:

Adults play a key role in the transition to early adulthood.

- Adults were often sought out for advice and were perceived as having more life experience to draw from to help young people make good choices and discourage them from bad choices.
- Adult kin, especially biological relatives, were most frequently included in participants' *inner circles* and cited as a significant source of support. However, biological mothers and fathers were seldom included as important *inner-circle* kin supports (see discussion below about loyalty to biological parents).
- Professionals (e.g., case managers, mentors, pastors, teachers, doctors) were the next largest group named in participants' adult support network. In some cases, youth cited long-lasting relationships with caseworkers that endured after foster care as *inner-circle* supports. However, most professionals tended to be named as middle and outer circle supports.

Relationships based on shared experiences and those that have lasted over time are a significant source of support.

- Most people in participants' *inner circles* were known for at least five years. Twenty participants named at least one person in their *inner circle* who had known them all of their lives.
- Siblings, friends, and significant others often provided the most permanent and enduring relationships over time. Best friends and siblings provided companionship through shared memories and histories that created a unique bond.
- People who have shared the foster care experience are especially valued because they know what foster care is like and speak from experience.
- When caseworkers have developed strong relationships with youth over time and have been with them for a significant part of their foster care experience, they are found to play an important

support role. In contrast, caseworkers who come and go are not viewed as important sources of support.

Transitioning youth have support needs that directly relate to the loss of their biological parent and family support system .

- The experience of losing their place in a secure biological family and entering care shaped many of participants' needs for support in adulthood.
- Emotional support was frequently cited as a support that was missing and what participants needed most to help them navigate through the removal from their families of origin and their foster care experiences.
- In the absence of emotional support, participants developed coping mechanisms to survive, such as self-reliance, that did not call upon existing supports or promote relationships with others who could offer emotional support.
- Suspicion of others' intentions and distrust, influenced by previous losses, was the greatest barrier to developing close relationships to others.

Youth are often loyal to biological parents and want relationships with them but are conflicted due to past experiences.

- Missing relationships that participants considered desirable and important included relationships with biological parents or a surrogate mother or father figure.
- Familial obligation strongly influences young adults' choice to include biological parents in their *inner circle.* Many young people feel they must include them because they're their parents. Including them is often driven by a sense of duty or loyalty, not by shared emotional bonds or true affection for the parent.

Older youth are uncertain about permanency and their ability to achieve it.

- Most participants did not trust adoption as a path to permanency. Their knowledge of the role of race, age, and gender in adoption preferences, and their loyalties to biological families, contributed to this view.
- While many participants had a technical understanding of what permanency means, few felt they would achieve it. Most desired a permanent home but had doubts that their biological parents could provide it and distrusted alternative relationships to provide it.

Practice Tips

The researchers offered the following suggestions for integrating their research findings into practice.

Promote relationships that help youth meet their needs for emotional guidance and support.

- Professionals and adults involved with older youth in foster care can play a role by talking often with youth about issues they may be struggling with—their removal from home, placement in foster care, feelings about adoption, feelings about biological parents, etc.
- Recognize peer roles in providing emotional support for youth. Support use of peer counseling to provide a forum for foster youth to process their foster care experiences and related emotions.
- Enhance existing relationships with adults whom youth trust or with whom trust could be strengthened (e.g., foster parents, adult biological relatives).

Help youth develop relational skills so they can sustain healthy relationships and avoid or end harmful ones.

- Include instruction on identifying and building personal relationships in materials used to prepare older foster youth for adulthood.

Broaden how the child welfare system views families to recognize multiple family relationships, memberships, and affiliations.

- Recognize youth are conflicted and have a sense of loyalty to biological families that may stand in the way of other permanency plans that may have been developed for them. Use approaches such as open adoption that can ease the difficulty youth face when asked to choose between biological, adoptive, foster and other families.

The researchers hope to fill a gap in efforts that support youths' transition to successful adulthoods by learning more about how personal connections can support their social-emotional well being. This less-studied aspect of the transition to independence is not usually the focus of independent living programs that prepare youth by teaching them life skills. The study findings emphasize the valuable role personal relationships play in the transition and the need to think creatively about ways to tap positive connections in new ways.

—*Claire Chiamulera,* Editor

Get this study:

This study, "A Reason, as Season, or a Lifetime: Relational Permanence Among Young Adults with Foster Care Backgrounds," by Gina Miranda Samuels, is available online at **www.chapinhall.org/article_abstract.aspx?ar=1466&L2=61&L3=130**

New Clues about Neglect in Early Life

Infant neglect is not given the same attention as infant death or abuse. Two new studies show infant neglect is a significant problem and can lead to aggressive behaviors in children. They emphasize the need to:

- ✓ Put supports in place for pregnant women and young mothers to prevent infant neglect.
- ✓ Intervene early for infants who suffer neglect.
- ✓ Collaborate with medical professionals on prevention and intervention efforts.
- ✓ Address the effects of neglect on children's development and behavior by seeking supports promptly.

An April 2008 report by The Centers for Disease Control (CDC) is the first to analyze nonfatal maltreatment among infants at the national level. It reveals that about 1 in 43 infants are victims of neglect in the United States. Many of these infants are reported to child protective services (CPS) in their first few days of life.

The CDC and the federal Administration for Children and Families (ACF) studied 2006 abuse and neglect data reported by states and localities to the National Child Abuse and Neglect Data System. They found 97,278 infants under age one experienced nonfatal maltreatment in 2006. Of these, 38.8% were one month old or less, while 32.7% were one week old or less. Nearly half (43.6%) of these infants were white; 25.2% were African American; and 19.3% Hispanic. Much smaller proportions represented other racial/ethic groups (see *Data at a Glance*).

Among the newborns (1 week old or less), 68% were neglected, and 13.2% were physically abused. Because newborns are likely to be in hospitals, medical personnel were the most likely to report neglect among this group (65.2%), with social services the next most likely to report (18.5%).

Since state definitions of maltreatment are inconsistent, the researchers could not pinpoint the exact circumstances of the maltreatment the infants experienced. However, they believed that many reports result from maternal and newborn drug tests, which are commonly reported to CPS as child neglect. But further research is needed to clearly identify the causes.

In addition to continuing existing research, early interventions, and prevention efforts, the researchers suggested a few strategies to intervene for these young victims, including:

- Look for missed opportunities to detect and manage early risk for maltreatment (e.g., prenatal care visits for pregnant women).
- Increase in-hospital programs for parents of newborns aimed at reducing maltreatment.
- Promote home visitation and parent-training programs starting during pregnancy to give parents support and help them understand infant development and appropriate discipline and parenting skills.

Get this study: "Nonfatal Maltreatment of Infants— United States, October 2005-September 2006" appeared in the April 4, 2008 issue of *Morbidity and Mortality Weekly Report* 57(13), 336-339. View the full report online at the CDC web site: www.cdc.gov/MMWR/preview/mmwrhtml/mm5713a2.htm

In the second study, researchers at the University of North Carolina at Chapel Hill found neglect in early childhood predicts aggressive behavior in children.

The researchers studied 1,300 children from four cities and one southern state. The children were known victims of maltreatment or were at risk of maltreatment and were monitored from birth through age eight.

Researchers measured the impact of maltreatment by monitoring the children, interviewing them and their caregivers, and conducting developmental testing of the children. To measure aggression, children's caregivers were asked for their perceptions of their child's behaviors, in response to a questionnaire covering 20 aspects of aggressive behavior (e.g., arguing, cruelty to others, destruction of property, disobedience, threatening people, fighting/physical attacks).

Only early neglect, occurring before age two, was found to predict aggressive behavior between the ages of four and eight. Early abuse, later abuse, and later neglect were not found to predict aggressive behavior.

The findings highlight the influence

ABA Resource

The Center on Children and the Law has a project that addresses the health of infants, toddlers, and preschoolers. This project offers training, publications, a listserv, and other resources for legal professionals. To learn more, visit: **www.abanet.org/child/baby-health.shtml**

Data at a Glance

In 2006:

- 905,000 child maltreatment victims were substantiated by state and local child welfare agencies
- 91,278 infants <1 year experienced nonfatal maltreatment
  - 38.8% = 1 month old or less
  - 32.7% = 1 week old or less

Maltreatment type:
- 68.5% were neglected
- 13.2% were physically abused

Sources of reports to CPS:
- 65.2% medical personnel
- 18.5% social services personnel

Race/ethnicity:
- 43.6% White
- 25.2% African American
- 19.3% Hispanic
- 1.3% American Indian or Alaska Native
- .6% Asian
- 3.1% Multiracial
- 6.9% Unknown

of early child neglect on children's behavior. In addition to aggression in later childhood, the researchers believed the link between neglect and aggression is likely to reach into late adolescence and adulthood. Citing concerns over the relationship between youth violence and later adult criminal and antisocial behaviors, the researchers suggested that early neglect may play a role in this cycle. Thus, intervening early with appropriate supports to address this link is key.

Get this study: "Importance of Early Neglect for Childhood Aggression," by Jonathan B. Kotch et al appeared in the April 2008 issue of *Pediatrics* 121(4), 725-731.

—*Claire Chiamulera,* Editor

Q&A Ask the Psychiatrist

Norton Roitman, MD, is child and adult psychiatrist in private practice in Las Vegas, Nevada. He contracts for evaluation and consultation services for children and families at Girls and Boys Town, Clark County School District, Clark County Department of Family Services, and the Department of Probation and Parole. In this new column, Dr. Roitman answers common questions lawyers have about mental health evaluations in child welfare cases.

The dependency court judge has ordered a mental health evaluation for a parent I represent. How do I explain to the parent why this is needed?

I presume the judge was not clear and the transcript of the proceeding does not explain the purpose of the evaluation — that the referral was made without explaining its context. I know this happens because I get referrals through juvenile public defenders, probation officers, and case managers like this. Sometimes the referring party does not know what was on the mind of the court. Nevertheless it is critical to estimate issues the court needs addressed.

Your familiarity with the court is critical to estimate what the judge has in mind. The more you understand the culture of the court and how it uses evaluations, the better guidance you can give your client. There is a range of possibilities. The court might refer parents for mental health evaluation as its standard operating procedure. It might be buying time to let things settle, get a second opinion from another discipline, or to test a client in another setting other than the court with the party's attorney present. Sometimes the court wants to inject some additional process or objectivity to the deliberations. Often a judge might just have a feeling and want to check it out.

Regardless of the court's reason you can tell your client that the evaluation constitutes a unique opportunity. An evaluation almost always provides more time for interchange and to exert a positive influence over the adjudication process. What is discussed with the evaluator can be carried into the report and testimony by the evaluator. Your client can flesh out his or her position and explain from the heart any concerns. It's their chance to represent themselves firsthand, and it if goes well, the evaluator might carry their positions to the judge. If the evaluator is court appointed, your client can be assured that the evaluator already has credibility and trust.

It is also fair to help your client understand that the forensic evaluation is different than going to a confidential therapist hired by your client to work out conflicts and problems. A court-ordered evaluation is a snapshot of mental abilities, not the chance to work through longstanding conflicts or unresolved feelings. It is not therapy. The material generated is not confidential, and anything the evaluator hears, reads, sees, or thinks can be disclosed. It is not necessary to be defensive, but diligence is only realistic. No matter how friendly the evaluator is, he or she is not a friend (or an enemy), and there is nothing off the record.

Like a deposition, questions should be answered in a pleasant and cooperative fashion, but volunteering a lot of information,

(Continued next page)

(**Q&A,** *continued from previous page*)
explanations, excuses or blaming others is not going to help, and might hurt. If there is a dispute between parties (such as divorcing spouses, conflicts with foster parents or case managers) your client would do well to wait for the portion of the interview where such explanations are appropriate, and be even tempered as much as possible. Tell your client to resist the natural tendency to try to recruit the evaluator for them. The facts should speak for themselves. Their presentation is more important than the accusations, and if there is some reason that interferes with their safe parenting, everyone should accept and try to correct it. Defending themselves or blaming other parties will not overshadow whatever weaknesses are there. If already in counseling, the parent might use the counselor to get clear headed in preparation for the evaluation.

The evaluation can be seen as real-time sample of how your client functions. If he or she (or they) can show their mature and giving sides, it is better than bringing in resentments and justifications. The issue is parenting, so your client needs to show their confidence, parental concerns, and responsibilities. They should be prepared to answer questions about their children to show they know and care about their kids.

Your client should know that some personality tests have scales that can show efforts to hide attitudes and feelings. The best approach to a personality inventory is to be honest, forthright, and avoid the pitfall of trying to game the test. It makes sense that your client will try to put his or her best foot forward. But even a testing expert would have a difficult time tricking the test. The effort to try to do this will be seen and attempts to deceive the evaluator could appear in the report.

Although an evaluation often provokes anxiety, it is one of the best ways to show someone who has the ear of the court just how responsible and stable the parent is. Even if there are persistent problems of some kind, the evaluator can see the parent's acceptance of their problems and efforts to control or reverse them. The focus of all parties should be the ability of your client to parent well, and the evaluation can be considered just another way to show parental competency.

The evaluation can be seen as real-time sample of how your client functions.

Finally, if the evaluation does not go well, the evaluator as a health provider has a duty to propose solutions. It is up to the court to judge, mandate treatment, drug testing or supervision, or terminate rights. But evaluators should be, at their base, caregivers, and if they are given inordinate authority by the court and making a harsh judgment, it is reasonable to ask them to propose a rehabilitative pathway. If they don't, it calls into question their function. Even though the evaluator should not start or promise treatment, they should have recommendations.

—Norton Roitman, MD

Send your questions

Have a question for Dr. Roitman about mental health issues in child welfare cases? Send an e-mail to CLP's editor at: chiamulerac@staff.abanet.org Dr. Roitman will answer it in a future column.

Promoting Good Mental Health

May is child mental health awareness month. A variety of signs may point to mental health disorders or serious emotional disturbances in children or adolescents. Signs to watch for:

A child is troubled by feeling:
- Sad and hopeless for no reason, and these feelings do not go away.
- Very angry most of the time and crying a lot or overreacting to things.
- Worthless or guilty often.
- Anxious or worried often.
- Unable to get over a loss or death of someone important.
- Extremely fearful or having unexplained fears.
- Constantly concerned about physical problems or physical appearance.
- Frightened that his or her mind either is controlled or is out of control.

A child experiences big changes:
- Showing declining performance in school.
- Losing interest in things once enjoyed.
- Experiencing unexplained changes in sleeping or eating patterns.
- Avoiding friends or family and wanting to be alone all the time.
- Daydreaming too much and not completing tasks.
- Feeling life is too hard to handle.
- Hearing voices that cannot be explained.
- Experiencing suicidal thoughts.

Seeking help
- Get accurate information from hotlines, libraries, or other sources.
- Seek referrals from professionals.
- Ask questions about treatments and services.
- Talk to other families in their communities.

Adapted from "Child and Adolescent Mental Health," a fact sheet by the SAMHSA's National Mental Health Information Center, http://mentalhealth.samhsa.gov

Six Steps to Address Rising STIs in Teen Girls

by Lisa Pilnik

Do you talk to adolescents you work with about their health? Talking about sexual health is not always easy. New research showing a high incidence of sexually transmitted infections[1] among teen girls makes these conversations even more critical.

More than one in four teenage girls has at least one STI according to a new study from the Centers for Disease Control and Prevention. Investigators analyzed data on 838 girls aged 14-19 and found:

- 18.3% had human papillomavirus (HPV, which is associated with cervical cancer and genital warts); 3.9% had chlamydia; 2.5% had trichomoniasis; and 1.2% had herpes simplex virus type 2.
- 15% percent of the teens who had an STI had more than one.
- 48% of African-American adolescent girls in the study, 20% of whites and 20% of Mexican Americans had at least one STI .
- 39.5% of teenage girls who were sexually experienced had an STI.[2]

Comprehensive Health Care Matters

Routine health care from a trusted provider helps ensure teens receive necessary STI screenings and treatment, says Moira Szilagyi, MD, PhD, a pediatrician with the Monroe County Health Department in Rochester, New York. The American Academy of Pediatrics recommends all children and adolescents entering foster care receive a screening for acute, high risk, or chronic mental and physical conditions within 72 hours of placement, and a more comprehensive medical evaluation within 30 days. (Clearly, a teen who has symptoms that may suggest an STI, such as vaginal discharge, a burning sensation during urination, sores on their genitalia or abdominal pain, should be evaluated immediately.)

In most jurisdictions the comprehensive evaluation would include STI risk assessment and screening for teens aged 13 or older (including pregnancy tests for girls). Dr. Szilagyi's practice, which exclusively serves children and adolescents in foster care, starts screening children at age 11. Once children are in the foster care system, the AAP recommends they see a doctor every six months. "There are so many opportunities for things to go wrong in the lives of these children," says Dr. Szilagyi, and doctors who see teens regularly may be able to pick up on more risk factors for STIs.

How Advocates Can Help

1. **Ask youth if they have a regular doctor they like and can talk to about their body and sexual health.** If not, advocate for a change. If possible, make sure teens see specialists in adolescent health, such as in a university hospital's adolescent health program.

2. **Encourage teens to be honest with their doctors.** Doctors often decide which tests to run or services to provide based on a patient's self-reported history. Tell teens to let their doctors know if they've ever been homeless, had an older sexual partner or multiple partners, lived in a detention facility, or experienced any "red flags" discussed in the box. Encourage her to tell her doctor (and you when she feels comfortable) if she is sexually active or has ever had unwanted sexual contact (youth may not think of themselves as sexually active if they were unwilling participants), but that she should tell her doctor. (The CDC study found that 7.5% of girls who said they were not sexually active had an STI; supporting the idea that youth may not always be willing to admit their sexual experiences to adults.)

3. **Learn how your state's confidentiality laws apply to STIs and pregnancy.** Explain to youth what information the doctor can and can't share with caseworkers, biological parents, or foster parents. (Note: HIV is sometimes treated differently than other STIs.) Encourage youth to ask you or their doctor if they have questions about confidentiality.

STI Risk Red Flags

All youth should receive comprehensive health care, including STI screenings, rather than singling out teens who are believed to be sexually active or otherwise at risk. Some red flags may indicate an adolescent may be at greater risk, says Dr. Szilagyi. These include:

- history of homelessness/living on the street
- having an older boyfriend/girlfriend or series of boyfriends/girlfriends
- truancy
- substance abuse
- living with a mother who abused substances or who had a string of boyfriends in the home
- time spent in a juvenile detention facility
- sexual abuse history

4. **Address cost concerns.** Medicaid should cover screening and treatment for STIs, but if few providers in your area accept Medicaid, consider providing clients contact information for a local Planned Parenthood or other free or low-cost reproductive health clinic.

5. **Explain to youth that *not* addressing STIs can harm their health in the future.** Untreated STIs can lead to infertility, pregnancy complications, certain cancers, chronic pelvic pain, and other conditions.

6. **Tell youth it's important to go to the doctor regularly, even if they feel healthy.** STIs can be symptom-free for long periods (e.g., a teen may have an STI but not feel ill or show signs of the disease, but can still be developing complications and transmitting it to others).

Lisa Pilnik, JD, MS, is a staff attorney at the ABA Center on Children and the Law.

Finding the Right Provider

If a teen doesn't trust their doctor, they won't get the best possible care. If you request a change in providers, it may help to suggest an alternative, or at least provide the caseworker ideas for where she can go. Dr. Szilagyi suggests the following options for locating an adolescent health provider:

- Many university-affiliated hospitals have adolescent health programs (and they usually accept Medicaid patients).
- Contact your local medical society. If your area does not have one, contact your state medical society, or your town or city's health department. Ask for a list of physicians who are currently accepting new patients and specialize or have an interest in adolescent medicine.
- Visit the AAP's pediatrician referral website at **www.aap.org/referral/** Enter your geographic information and select "Section on Adolescent Health" in the Medical Specialty section.
- Visit the Society for Adolescent Medicine's website at **www.adolescenthealth.org** and click on "Find an Adolescent Health Professional." Search for a provider by geographic area or discipline.

Endnotes

[1] STIs are also called sexually transmitted diseases or STDs

[2] The data did not allow for meaningful conclusions about any other racial or ethnic groups. The data analyzed in the study came from the 2003-2004 National Health and Nutrition Examination Survey, an annual study that looks at a variety of health issues in American households. The study did not look at any STIs other than the four discussed. Data on gonorrhea will be analyzed in the future.

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